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United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
SUITE 310
625 SILVER AVENUE, S.W.
ALBUQUERQUE, NEW MEXICO 87102

Mine file
D.R.W.
Pam
Lowell



In Reply Refer To:

April 17, 1992



APR 24 1992

DIVISION OF
OIL GAS & MINING

CERTIFIED - RETURN RECEIPT NO: P 965 799 255

Mr. Lowell P. Braxton, Associate Director, Mining
Department of Natural Resources
Division of Oil, Gas and Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Re: Ten-Day Notice 92-02-352-002 TV1, Bear Canyon Mine,
Permit ACT/015/025

Dear Mr. Braxton:

The following is a written finding, in accordance with 30 CFR 842.11, regarding the Division of Oil, Gas and Mining's (DOGM) response to the above referenced Ten-Day Notice (TDN).

On March 12, 1992, the Albuquerque Field Office (AFO) conducted a random sample inspection of the Bear Canyon Mine. The AFO inspector accompanied a DOGM inspector. The inspection resulted in the issuance of the TDN referenced above for an alleged violation of the Utah rules. The TDN was dated March 23, 1992, and was received by DOGM on March 30, 1992. AFO received DOGM's response on April 10, 1992.

The alleged violation cites Utah Rule 645-301-553.520 as the rule violated. This rule states.

"The requirements of R614-301-553.110 and R614-301-553.120 requiring that elimination of highwalls will not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the

Division to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall will be eliminated to the maximum extent technically practical in accordance with the following criteria."

DOGM's response states, in part:

"The regulation cited and the language used in writing the TDN both infer that OSM feels the operation at Bear Canyon qualifies as a pre-SMCRA affected site. This is not true, nor is this position supported in the permit."

"Language in the MRP reads: "Plates 3-2 show existing highwalls (Plates 2-4 are recovered during reclamation). Appendix 3-L includes cut and fill calculations for the mine site including removal of the highwalls.""

AFO determined that the site had been affected before mining on the basis of information contained in the Mine Reclamation Plan (MRP) that states that mining in the area had been done prior to SMCRA. In chapter 3 of the MRP, page 3-1 under "Surface Facilities-Existing" the text states:

"The mine which existed at the present site when mining began had been abandoned for over 30 years****"

Page 3-72 of the MRP under "Removal and Reduction of Highwall" the text states:

"Due to the pre-1977 disturbance (pre-law) in the area (See Plates 2-4) and resulting lack of available backfill material (App 3-L) and the proven stability, highwalls shown on Plate 3-2 will remain after reclamation."

Plates 2-4A through 2-4D show the Pre-1977 Disturbance which covers most of the current mine area including the majority of the highwalls. Plate 3-2 shows the location of "Proposed Highwalls to be Left or Slightly Reduced". Appendix 3-L is the "Cut and Fill Calculations". In this section are drawings 3L-7 through 3L-22. These drawings are cross sections showing the existing and post mining contours of the areas which are highwalls. Drawings 3L-8 through 3L-12 all show excess spoil. There is no documentation that this spoil or other reasonably available spoil will be used to eliminate the reaffected or enlarged highwalls.

The intent of Rule 645-301-553.520 is to insure that all reasonably available spoil is used to eliminate as much highwall as is technically practical in areas where pre-law mining has occurred. In contrast, the Bear Canyon MRP indicates that all reasonably available spoil will not be used to eliminate as much highwall as is technically practical.

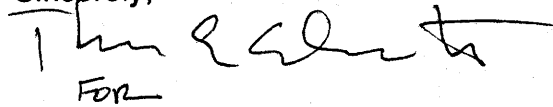
Mr. Lowell P. Braxton

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AFO believes that DOGM's response regarding the Backfilling plan in the Bear Canyon MRP does not demonstrate compliance with of Rule 645-301-553.520. AFO finds that DOGM's response to TDN 92-02-352-002 TV1 constitutes an arbitrary and capricious response and is therefore inappropriate.

If you disagree with these findings, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(ii)(A).

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Hagen", with a horizontal line extending from the end of the signature.

For

Robert H. Hagen, Director
Albuquerque Field Office